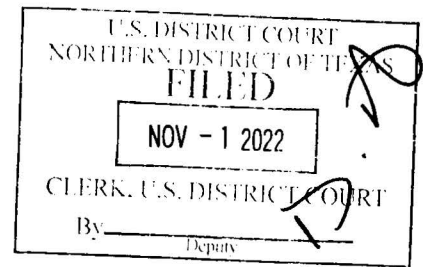


IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
AMARILLO DIVISION



STEPHEN "COBEY" MONDEN,

Plaintiff,

v.

CONSOLIDATED NUCLEAR
SECURITY LLC,

Defendant.

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2:22-CV-004-Z-BR

MEMORANDUM OPINION AND ORDER

Before the Court is Defendant's Motion for Judgment on the Pleadings and Brief in Support ("Motion") (ECF No. 28), filed on September 19, 2022. Having considered the Motion, briefing, and relevant law, the Court **GRANTS** the Motion.

Defendant argues Plaintiff's "implicit fraud" claim and negligent misrepresentation claim both fail to meet the heightened pleading standards required by Federal Rule of Civil Procedure 9(b) and Plaintiff's negligent misrepresentation claim is also barred by the statute of limitations. *See generally* ECF No. 28 at 8. On October 3, 2022, Plaintiff filed his Motion for Leave to File Amended Complaint (ECF No. 30). The Court denied that motion — finding the proposed amendment would be futile. *See* ECF No. 47 ("Order"). With respect to the claims also brought in the original complaint, the Court held: (1) Plaintiff's negligent misrepresentation claim is barred by the statute of limitations; and (2) Plaintiff's implicit fraud claim failed to satisfy the elements of common law fraud. *Id.* at 3–6, 8–10.

The Court finds its Order dispositive on the instant Motion. Simply put, the Court has considered Plaintiff's proposed amendments and additional facts pled in his briefs and held even Plaintiff's strongest pleadings on these claims would not survive a Rule 12(b)(6) motion. The same

must also be true for these claims in Plaintiff's original complaint. Additionally, Plaintiff failed to defend the operative complaint subject to the Motion by relying on facts set forth in his proposed amended complaint. *See* ECF No. 32 at 2–10; *United States v. Fulton County*, No. 1:14-CV-4071-WSD, 2016 WL 4158392, at *3 (N.D. Ga. Aug. 5, 2016) (“[B]ecause Relators base their Response entirely on their Proposed Amendment complaint, SoCo’s Motion to Dismiss the original complaint should be deemed unopposed and, as a result, it is granted.”). Therefore, Plaintiff’s claims for implicit fraud and negligent misrepresentation must both be dismissed.

CONCLUSION

For the foregoing reasons, the Court **GRANTS** Defendant’s Motion. Accordingly, Plaintiff’s sole remaining claim is his claim brought under 41 U.S.C. § 4712.

SO ORDERED.

November 1, 2022

A handwritten signature in black ink, appearing to read 'M. J. Kacsmaryk', written over a horizontal line.

MATTHEW J. KACSMARYK
UNITED STATES DISTRICT JUDGE